

AMENDED IN SENATE MAY 10, 2006

AMENDED IN SENATE APRIL 5, 2006

SENATE BILL

No. 1749

Introduced by Senator Migden

February 24, 2006

An act to amend Section 640 of the Penal Code, and to add Chapter 8 (commencing with Section 99580) to Part 11 of Division 10 of the Public Utilities Code, relating to transit.

LEGISLATIVE COUNSEL'S DIGEST

SB 1749, as amended, Migden. Transit fare evasion.

Existing law provides that it is an infraction, punishable by a fine not to exceed \$250 and by specified community service, to evade the payment of any fare of, or engage in passenger misconduct on or in a described facility or vehicle.

This bill would authorize the City and County of San Francisco to adopt and enforce an ordinance, *which would not apply to minors*, to impose and enforce civil administrative penalties for fare evasion or passenger misconduct on or in a facility or vehicle, as described, in lieu of the criminal penalties. The bill would specify the administrative adjudication procedures for the imposition and enforcement of the administrative penalties.

The bill would make legislative findings and declarations regarding the inapplicability of a general statute within the meaning of Section 16 of Article IV of the California Constitution.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 640 of the Penal Code is amended to read:

640. (a) Any of the acts described in subdivision (b) is an infraction punishable by a fine not to exceed two hundred fifty dollars (\$250) and by community service for a total time not to exceed 48 hours over a period not to exceed 30 days, during a time other than during his or her hours of school attendance or employment, when committed on or in any of the following:

(1) A facility or vehicle of a public transportation system as defined by Section 99211 of the Public Utilities Code.

(2) A facility of, or vehicle operated by any entity subsidized by, the Department of Transportation.

(3) A leased or rented facility or vehicle for which any of the entities described in paragraph (1) or (2) incur costs of cleanup, repair, or replacement as a result of any of those acts.

(b) (1) Evasion of the payment of a fare of the system.

(2) Misuse of a transfer, pass, ticket, or token with the intent to evade the payment of a fare.

(3) Playing sound equipment on or in a system facility or vehicle.

(4) Smoking, eating, or drinking in or on a system facility or vehicle in those areas where those activities are prohibited by that system.

(5) Expectorating upon a system facility or vehicle.

(6) Willfully disturbing others on or in a system facility or vehicle by engaging in boisterous or unruly behavior.

(7) Carrying an explosive or acid, flammable liquid, or toxic or hazardous material in a public transit facility or vehicle.

(8) Urinating or defecating in a system facility or vehicle, except in a lavatory. However, this paragraph shall not apply to a person who cannot comply with this paragraph as a result of a disability, age, or a medical condition.

(9) (A) Willfully blocking the free movement of another person in a system facility or vehicle.

(B) This paragraph (9) shall not be interpreted to affect any lawful activities permitted or first amendment rights protected under the laws of this state or applicable federal law, including,

1 but not limited to, laws related to collective bargaining, labor
2 relations, or labor disputes.

3 (10) Skateboarding, roller skating, bicycle riding, or roller
4 blading in a system facility, vehicle, or parking structure. This
5 paragraph does not apply to an activity that is necessary for
6 utilization of the transit facility by a bicyclist, including, but not
7 limited to, an activity that is necessary for parking a bicycle or
8 transporting a bicycle aboard a transit vehicle, if that activity is
9 conducted with the permission of the transit agency in a manner
10 that does not interfere with the safety of the bicyclist or other
11 patrons of the transit facility.

12 (11) (A) Unauthorized use of a discount ticket or failure to
13 present, upon request from a transit system representative,
14 acceptable proof of eligibility to use a discount ticket, in
15 accordance with Section 99155 of the Public Utilities Code and
16 posted system identification policies when entering or exiting a
17 transit station or vehicle. Acceptable proof of eligibility must be
18 clearly defined in the posting.

19 (B) In the event that an eligible discount ticket user is not in
20 possession of acceptable proof at the time of request, any citation
21 issued shall be held for a period of 72 hours to allow the user to
22 produce acceptable proof. If the proof is provided, the citation
23 shall be voided. If the proof is not produced within that time
24 period, the citation shall be processed.

25 (c) Notwithstanding subdivision (a), the City and County of
26 San Francisco may enact and enforce an ordinance providing that
27 any of the acts described in subdivision (b) on or in a facility or
28 vehicle described in subdivision (a) for which the City and
29 County of San Francisco has jurisdiction shall be subject only to
30 an administrative penalty imposed and enforced in a civil
31 proceeding. The ordinance for imposing and enforcing the
32 administrative penalty shall be governed by Chapter 8
33 (commencing with Section 99580) of Part 11 of Division 10 of
34 the Public Utilities Code *and shall not apply to minors*.

35 SEC. 2. Chapter 8 (commencing with Section 99580) is
36 added to Part 11 of Division 10 of the Public Utilities Code, to
37 read:

CHAPTER 8. ADMINISTRATIVE ENFORCEMENT FOR FARE
EVASION AND PROHIBITED CONDUCTS

99580. (a) Pursuant to subdivision (c) of *Section 640* of the Penal Code, the City and County of San Francisco may enact and enforce an ordinance to impose and enforce an administrative penalty for any of the acts described in subdivision (b). The ordinance shall include the provisions of this chapter *and shall not apply to minors*.

(b) (1) Evasion of the payment of a fare of the system.

(2) Misuse of a transfer, pass, ticket, or token with the intent to evade the payment of a fare.

(3) Playing sound equipment on or in a system facility or vehicle.

(4) Smoking, eating, or drinking in or on a system facility or vehicle in those areas where those activities are prohibited by that system.

(5) Expectorating upon a system facility or vehicle.

(6) Willfully disturbing others on or in a system facility or vehicle by engaging in boisterous or unruly behavior.

(7) Carrying an explosive or acid, flammable liquid, or toxic or hazardous material in a system facility or vehicle.

(8) Urinating or defecating in a system facility or vehicle, except in a lavatory. However, this paragraph shall not apply to a person who cannot comply with this paragraph as a result of a disability, age, or a medical condition.

(9) (A) Willfully blocking the free movement of another person in a system facility or vehicle.

(B) This paragraph shall not be interpreted to affect any lawful activities permitted or first amendment rights protected under the laws of this state or applicable federal law, including, but not limited to, laws related to collective bargaining, labor relations, or labor disputes.

(10) Skateboarding, roller skating, bicycle riding, or roller blading in a system facility, including a parking structure, or in a system vehicle. This paragraph does not apply to an activity that is necessary for utilization of a system facility by a bicyclist, including, but not limited to, an activity that is necessary for parking a bicycle or transporting a bicycle aboard a system vehicle, if that activity is conducted with the permission of the

1 agency of the system in a manner that does not interfere with the
2 safety of the bicyclist or other patrons of the system facility.

3 (11) (A) Unauthorized use of a discount ticket or failure to
4 present, upon request from a system representative, acceptable
5 proof of eligibility to use a discount ticket, in accordance with
6 Section 99155, and posted system identification policies when
7 entering or exiting a system station or vehicle. Acceptable proof
8 of eligibility must be clearly defined in the posting.

9 (B) In the event that an eligible discount ticket user is not in
10 possession of acceptable proof at the time of request, an issued
11 notice of fare evasion or passenger conduct violation shall be
12 held for a period of 72 hours to allow the user to produce
13 acceptable proof. If the proof is provided, that notice shall be
14 voided. If the proof is not produced within that time period, that
15 notice shall be processed.

16 (c) (1) The City and County of San Francisco may contract
17 with a private vendor for the processing of notices of fare evasion
18 or passenger conduct violation, and notices of delinquent fare
19 evasion or passenger conduct violation pursuant to Section
20 99581.

21 (2) For the purpose of this chapter, “processing agency” means
22 either of the following:

23 (A) The agency issuing the notice of fare evasion or passenger
24 conduct violation and the notice of delinquent fare evasion or
25 passenger conduct violation.

26 (B) The party responsible for processing the notice of fare
27 evasion or passenger conduct violation and the notice of
28 delinquent violation, if a contract is entered into pursuant to
29 paragraph (1).

30 (3) For the purpose of this chapter, “fare evasion or passenger
31 conduct violation penalty” includes, but is not limited to, a late
32 payment penalty, administrative fee, fine, assessment, and costs
33 of collection as provided for in the ordinance.

34 (4) All fare evasion and passenger conduct violation penalties
35 collected by the processing agency shall be deposited to the
36 ~~account of the agency that is specified as the issuing agency in~~
37 ~~the ordinance~~ *General Fund of the City and County of San*
38 *Francisco.*

39 (d) (1) If a fare evasion or passenger conduct violation is
40 observed by a person authorized to enforce the ordinance, a

1 notice of fare evasion or passenger conduct violation shall be
2 issued. The notice shall set forth the violation, including
3 reference to the ordinance setting forth the administrative
4 penalty, the date of the violation, the approximate time, *and* the
5 location where the violation occurred. The notice shall include a
6 printed statement indicating the date payment is required to be
7 made, and the procedure for contesting the notice. The notice
8 shall be served by personal service upon the violator. The notice,
9 or copy of the notice, shall be considered a record kept in the
10 ordinary course of business of the issuing agency and the
11 processing agency, and shall be prima facie evidence of the facts
12 contained in the notice establishing a rebuttable presumption
13 affecting the burden of producing evidence.

14 (2) When a notice of fare evasion or passenger conduct
15 violation has been served, the person issuing the notice shall file
16 the notice with the processing agency.

17 (3) If a person contests a notice of fare evasion or passenger
18 conduct violation, the issuing agency shall proceed in accordance
19 with Section 99581.

20 99581. (a) For a period of 21 calendar days from the issuance
21 to a person of the notice of fare evasion or passenger conduct
22 violation, the person may request an initial review of the
23 violation by the issuing agency. The request may be made by
24 telephone, in writing, or in person. There shall be no charge for
25 this review. If, following the initial review, the issuing agency is
26 satisfied that the violation did not occur or that extenuating
27 circumstances make dismissal of the administrative penalty
28 appropriate in the interest of justice, the issuing agency shall
29 cancel the notice. The issuing agency shall advise the processing
30 agency, if any, of the cancellation. The issuing agency or the
31 processing agency shall mail the results of the initial review to
32 the person contesting the notice.

33 (b) If the person is dissatisfied with the results of the initial
34 review, the person may request an administrative hearing of the
35 violation no later than 21 calendar days following the mailing of
36 the results of the issuing agency's initial review. The request may
37 be made by telephone, in writing, or in person. The person
38 requesting an administrative hearing shall deposit with the
39 processing agency the amount due under the notice for which the
40 administrative hearing is requested. The issuing agency shall

1 provide a written procedure to allow a person to request an
2 administrative hearing without payment of the amount due upon
3 satisfactory proof of an inability to pay the amount due. Notice of
4 this procedure shall be provided to all persons requesting an
5 administrative hearing. An administrative hearing shall be held
6 within 90 calendar days following the receipt of a request for an
7 administrative hearing, excluding time tolled pursuant to this
8 chapter. The person requesting the hearing may request one
9 continuance, not to exceed 21 calendar days.

10 (c) The administrative hearing process shall include all of the
11 following:

12 (1) The person requesting a hearing shall have the choice of a
13 hearing by mail or in person. An in-person hearing shall be
14 conducted within the jurisdiction of the issuing agency. If an
15 issuing agency contracts with a private vendor pursuant to
16 paragraph (1) of subdivision (c) of Section 99580, hearings shall
17 be held within the jurisdiction of the issuing agency ~~or no more~~
18 ~~than 21 miles outside the county.~~

19 ~~(2) If the person requesting a hearing is a minor, that person~~
20 ~~shall be permitted to appear at a hearing or admit responsibility~~
21 ~~for the violation without the necessity of the appointment of a~~
22 ~~guardian. Notwithstanding any other provision of law, the~~
23 ~~processing agency may proceed against the minor in the same~~
24 ~~manner as against an adult.~~

25 ~~(3)–~~

26 (2) The administrative hearing shall be conducted in
27 accordance with written procedures established by the issuing
28 agency and approved by the governing body or chief executive
29 officer of the issuing agency. The hearing shall provide an
30 independent, objective, fair, and impartial review of contested
31 violations.

32 ~~(4)–~~

33 (3) The administrative review shall be conducted before a
34 hearing officer designated to conduct the review by the issuing
35 agency's governing body or chief executive officer. In addition
36 to any other requirements of employment, a hearing officer shall
37 demonstrate those qualifications, training, and objectivity
38 prescribed by the issuing agency's governing body or chief
39 executive as are necessary and which are consistent with the
40 duties and responsibilities set forth in this chapter. The hearing

1 officer's continued employment, performance evaluation,
2 compensation, and benefits shall not be directly or indirectly
3 linked to the amount of fare evasion or passenger conduct
4 violation penalties imposed by the hearing officer.

5 ~~(5)–~~

6 (4) The person who issued the notice of fare evasion or
7 passenger conduct violation shall not be required to participate in
8 an administrative hearing. The issuing agency shall not be
9 required to produce any evidence other than the notice of fare
10 evasion or passenger conduct violation. The documentation in
11 proper form shall be prima facie evidence of the violation
12 pursuant to paragraph (1) of subdivision (d) of Section 99580.

13 ~~(6)–~~

14 (5) The hearing officer's decision following the administrative
15 hearing may be personally delivered to the person by the hearing
16 officer or sent by first-class mail.

17 ~~(7)–~~

18 (6) Following a determination by the hearing officer that a
19 person committed the violation, the hearing officer may allow
20 payment of the fare evasion or passenger conduct penalty in
21 installments or deferred payment if the person provides
22 satisfactory evidence of an inability to pay the fare evasion or
23 passenger conduct penalty in full. If authorized by the issuing
24 agency, the hearing officer may permit the performance of
25 community service in lieu of payment of the fare evasion or
26 passenger conduct penalty.

27 99582. (a) Within 30 calendar days after the mailing or
28 personal delivery of the decision described in subdivision (c) of
29 Section 99581, the person may seek review by filing an appeal to
30 be heard by the superior court where the same shall be heard de
31 novo, except that the contents of the processing agency's file in
32 the case shall be received in evidence. A copy of the notice of
33 fare evasion or passenger conduct violation shall be admitted into
34 evidence as prima facie evidence of the facts stated therein
35 establishing a rebuttable presumption affecting the burden of
36 producing evidence. A copy of the notice of appeal shall be
37 served in person or by first-class mail upon the processing
38 agency by the person filing the appeal. For purposes of
39 computing the 30-calendar-day period, Section 1013 of the Code

1 of Civil Procedure shall be applicable. A proceeding under this
2 subdivision is a limited civil case.

3 (b) Notwithstanding any other provision of law, the fee for
4 filing the notice of appeal shall be ~~twenty-five dollars (\$25)~~
5 *pursuant to paragraph (2) of subdivision (b) of Section 53069.4*
6 *of the Government Code*. The court shall request that the
7 processing agency's file on the case be forwarded to the court, to
8 be received within 15 calendar days of the request. The court
9 shall notify the appellant of the appearance date by mail or
10 personal delivery. The court shall retain the ~~twenty-five dollar~~
11 ~~(\$25)~~ fee regardless of the outcome of the appeal. If the court
12 finds in favor of the appellant, the amount of the filing fee shall
13 be reimbursed to the appellant by the processing agency. Any
14 deposit of fare evasion or passenger conduct penalty shall be
15 refunded by the processing agency in accordance with the
16 judgment of the court.

17 (c) The conduct of the appeal under this section is a
18 subordinate judicial duty that may be performed by a
19 commissioner and other subordinate judicial officials at the
20 direction of the presiding judge of the court.

21 (d) If a notice of appeal of the processing agency's decision
22 described in subdivision (c) of Section 99581 is not filed within
23 the period set forth in subdivision (a), that decision shall be
24 deemed final.

25 SEC. 3. The Legislature finds and declares that because of the
26 unique and special problems associated with fare evasion and
27 passenger misconduct in a public transportation system in the
28 City and County of San Francisco, it is necessary that minor
29 transit violations, such as fare evasion and passenger misconduct,
30 now punishable as an infraction, be adjudicated in that
31 jurisdiction through a civil administrative process, and a statute
32 of general applicability cannot be enacted within the meaning of
33 Section 16 of Article IV of the California Constitution.`